

**SUPERIOR COURT OF CALIFORNIA,  
COUNTY OF VENTURA  
VENTURA DIVISION**

**TENTATIVE RULINGS**

EVENT DATE: 05/09/2016  
JUDICIAL OFFICER: Kevin DeNoce

EVENT TIME: 08:20:00 AM

DEPT.: 43

CASE NUM: 56-2014-00453766-CU-PO-VTA  
CASE TITLE: THOMAS VS. RECREATION RESOURCE MANAGEMENT

CASE CATEGORY: Civil - Unlimited

CASE TYPE: PI/PD/WD - Other

EVENT TYPE: Motion for Summary Judgment - as to Plaintiff Jeffrey Alan Thomas  
CAUSAL DOCUMENT/DATE FILED: Motion for Summary Judgment, 02/09/2016

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With respect to the below scheduled tentative ruling, no notice of intent to appear is required. If you wish to submit on the tentative decision, you can send an email to the court at: [Courtroom43@ventura.courts.ca.gov](mailto:Courtroom43@ventura.courts.ca.gov) or send a telefax to Judge DeNoce's secretary, Hellmi McIntyre at 805-477-5894, stating that you submit on the tentative. Do not call in lieu of sending a telefax, nor should you call to see if your telefax has been received. If you submit on the tentative without appearing and the opposing party appears, the hearing will be conducted in your absence. This case has been assigned to Judge DeNoce for all purposes.

Absent waiver of notice and in the event an order is not signed at the hearing, the prevailing party shall prepare a proposed order and comply with CRC 3.1312 subdivisions (a), (b), (d) and (e). The signed order shall be served on all parties and a proof of service filed with the court. A "notice of ruling" in lieu of this procedure is not authorized.

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**The court's tentative ruling is as follows:**

Deny the motion. Plaintiff has established a triable issue of material fact as to whether the doctrine of primary assumption of the risk applies to the facts of this case.

For purposes of this motion only:

Undisputed material facts nos. 1, 2, 3, 4, 5, and 8 are undisputed and established.

Undisputed material facts nos. 6 and 7 establish that Plaintiff alleges that while he was on the pontoon boat, the seat on which he was sitting broke, causing him to fall backwards on the floor of the boat. Plaintiff has submitted evidence controverting whether Plaintiff was "fishing" at the time of the incident.

**Discussion:**

Plaintiff alleges that while he sat in the rented pontoon boat, the seat on which he was sitting broke, causing him to fall backwards on the floor of the boat. Def RRM argues that Plaintiff was fishing when the incident occurred, Plaintiff argues he was not fishing. There is a triable issue of fact as to whether Plaintiff was fishing at the time of the incident. When the incident occurred, Plaintiff had a worm in his right hand, and his fishing pole was leaning against his right leg. His father was not on the boat. He was on the dock, going to his truck to get some things.

RRM has not established that Plaintiff was injured while participating in the activity of fishing. Plaintiff was putting a worm on his hook when he sat back on the broken chair and sustained injury. When he leaned back on the seat, the seat snapped off, causing Plaintiff to fall back and sideward onto the deck of the boat. Sitting on a boat does not involve

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an inherent risk of injury because the risk a broken seat creates can be eliminated if the seat is repaired or replaced. Sitting in a chair or seat is not integral to fishing. Def RRM has provided no authority holding that a broken seat on a rental fishing boat is an inherent risk of the sport of fishing. Using a fishing pole would be integral to fishing and the risk of using a normally functioning fishing pole carries inherent risks which are can be waived. However, the use of a defective chair (if that is the case) is not an inherent risk of fishing and therefore the assumption of the risk doctrine is inapplicable.

Defendant RRM's reliance on *Knight v. Jewett* (1992) 3 Cal.4<sup>th</sup> 296 is misplaced because it cannot be said that Plaintiff assumed any risk associated with a potentially defective chair. Further, in *Knight v. Jewett*, the Supreme Court stated that defendants generally do have a duty to use care not to increase the risks to a participant over and above those inherent in the sport. (*Knight v. Jewett*, supra, 3 Cal.4<sup>th</sup> at 315-316.) Here, even though defendants generally have no legal duty to eliminate or protect Plaintiff against the risks inherent in the fishing, they may not increase the risks above that which is inherent in the sport. Providing a defective/broken pole or defective/broken chair would increase the risks beyond those inherent in the sport of fishing particularly where the defect is not readily apparent to users. Plaintiff was sitting in the defendant's RRM's boat when the seat snapped off, causing Plaintiff to fall back and sideward onto the deck of the boat. Even assuming Plaintiff was fishing at the time of the incident, a broken chair would improperly increase the risk of that activity such that there can be no assumption of that risk.